

the satisfaction of the Commission that the additional evidence is material, and that there were reasonable grounds for failure to adduce such evidence at the hearing. The Commission may hear the additional evidence or may refer the proceeding to the Administrative Law Judge for the taking of the additional evidence.

§ 10.108 Settlements.

(a) *When offers may be made.* Parties may at any time during the course of the proceeding propose offers of settlement. All offers of settlement shall be in writing.

(b) *Content of offer of settlement.* Each offer of settlement made by a respondent shall:

(1) Acknowledge service of the Complaint;

(2) Admit the jurisdiction of the Commission with respect to the matters set forth in the Complaint;

(3) Include a waiver of:

(i) A hearing,

(ii) All post-hearing procedures,

(iii) Judicial review, and

(iv) Any objection to the staff's participation in the Commission's consideration of the offer;

(4) Stipulate the record basis on which an order may be entered, which may consist solely of the complaint and the findings contained in the offer of settlement; and

(5) Consent to the entry of an order reflecting the terms of settlement agreed upon, including, where appropriate:

(i) Findings by the Commission that the respondent has violated specified provisions of the Act, and

(ii) The imposition of sanctions.

(c) *Submission of offer of settlement.* Offers of settlement made by a respondent shall be submitted in writing to the Division of Enforcement, which shall present them to the Commission with the Division's recommendation. The respondent will be informed if the recommendation will be unfavorable, in which event the offer shall not be presented to the Commission unless the respondent so requests. Any offer of settlement not presented to the Commission shall be null and void with respect to any acknowledgement, admission, waiver, stipulation or consent

contained in the offer and shall not be used in any manner in the proceeding by any party thereto.

(d) *Acceptance of offer by the Commission.* The Commission will accept an offer of settlement only by issuing its opinion and order based on the offer. Upon issuance of the opinion and order, the proceeding shall be terminated as to the respondent involved and so noted on the docket by the Proceedings Clerk.

(e) *Rejection of offer of settlement; effect of rejection.* When the Commission rejects an offer of settlement, the party making the offer shall be notified of the Commission's action and the offer of settlement shall be deemed withdrawn. A rejected offer of settlement and any documents relating thereto shall not constitute a part of the record in the proceeding; and the offer will be null and void with respect to any acknowledgment, admission, waiver, stipulation or consent contained in the offer and shall not be used in any manner in the proceeding by any party thereto.

[41 FR 2511, Jan. 16, 1976, as amended at 60 FR 54802, Oct. 26, 1995]

§ 10.109 Delegation of authority to Chief of the Opinions Section.

The Commodity Futures Trading Commission hereby delegates, until such time as it orders otherwise, the following functions to the Deputy General Counsel for Opinions and Review, to be performed by him or by such person or persons under his direction as he may designate from time to time:

(a) With respect to proceedings conducted pursuant to the Commodity Exchange Act, as amended, 7 U.S.C. 1 *et seq.*, and subject to the Commission's Rules of Practice as set forth in part 10 of this chapter, to:

(1) Consider and decide miscellaneous motions for procedural orders that may be directed to the Commission pursuant to part 10 of these rules after the initial decision or other order disposing of the entire proceeding has been filed; such motions may be acted upon at anytime, without awaiting a response;

(2) Remand, with or without specific instructions, initial decisions or other

Commodity Futures Trading Commission

§ 10.110

orders disposing of the entire proceeding to the appropriate officer in the following situations:

(i) Where a default order has been made pursuant to §10.93 of these rules and a motion to vacate the default or equivalent request has been directed to the Commission under §10.94 without the benefit of a prior ruling by the Administrative Law Judge;

(ii) Where, in his judgment, clarification or supplementation of the initial decision or other order disposing of the entire proceeding prior to Commission review is appropriate; however, the Deputy General Counsel for Opinions and Review may not direct that the record be reopened;

(iii) Where, in his judgment, a ministerial act necessary to the proper conduct of the proceeding has not been performed;

(3) Deny applications for interlocutory Commission review of a ruling of the Administrative Law Judge in cases in which the Administrative Law Judge has not certified the ruling to the Commission in the manner prescribed by §10.101(a) of the rules; and the ruling does not concern the disqualification of, or a motion to disqualify, an Administrative Law Judge; and the ruling does not concern the suspension of, or failure to suspend, an attorney from participation in a particular proceeding, or the denial of intervention or limited participation;

(4) Deny any application for interlocutory review in a proceeding if it is not filed in accordance with §10.101(b) of these rules;

(5) Dismiss any appeal from an initial decision or other disposition of the entire proceeding by an Administrative Law Judge, where such appeal is not filed and perfected in accordance with §10.102 of these rules;

(6) Strike any filing that does not meet the requirements of, or is not perfected in accordance with, part 10 of these rules;

(7) Stay, for a limited period of time not to exceed ten working days, any order of the Commission entered in a proceeding subject to these rules;

(b) Notwithstanding the provisions of paragraph (a) of this section, in any case in which the Deputy General Counsel for Opinions and Review be-

lieves it appropriate, he may submit the matter to the Commission for its consideration;

(c) Within seven (7) days after service of a ruling issued pursuant to paragraph (a) of this section, a party may file with the Proceedings Clerk a petition for Commission reconsideration of the ruling. Unless the Commission orders otherwise, the filing of a petition for reconsideration shall not operate to stay the effective date of such ruling;

(d) This rule is applicable to all proceedings pending as of August 20, 1985.

[50 FR 33515, Aug. 20, 1985, as amended at 60 FR 54802, Oct. 26, 1995]

Subpart I—Restitution Orders

SOURCE: 63 FR 55795, Oct. 19, 1998, unless otherwise noted.

§ 10.110 Basis for issuance of restitution orders.

(a) *Appropriateness of restitution as a remedy.* In any proceeding in which an order requiring restitution may be entered, the Administrative Law Judge shall, as part of his or her initial decision, determine whether restitution is appropriate. In deciding whether restitution is appropriate, the Administrative Law Judge, in his or her discretion, may consider the degree of complexity likely to be involved in establishing claims, the likelihood that claimants can obtain compensation through their own efforts, the ability of the respondent to pay claimants damages that his or her violations have caused, the availability of resources to administer restitution and any other matters that justice may require.

(b) *Restitution order.* If the Administrative Law Judge determines that restitution is an appropriate remedy in a proceeding, he or she shall issue an order specifying the following:

(1) All violations that form the basis for restitution;

(2) The particular persons, or class or classes of persons, who suffered damages proximately caused by each such violation;

(3) The method of calculating the amount of damages to be paid as restitution; and